

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes

TELEPHONIC MEETING

State Courts Building
1501 W. Washington
Conference Room 119 A/B
Phoenix, AZ
December 3, 2010

MEMBERS PRESENT:	
Honorable Linda Gray	Ella Maley
Theresa Barrett	Laura Sabin-Cabanillas
Sidney Buckman	Donnalee Sarda
Daniel Cartagena	Ellen Seaborne
Honorable Sharon Douglas	Russell Smoldon
William Fabricius	David Weinstock
Jack Gibson	Thomas L. Wing
Grace Hawkins	Steve Wolfson
Jeanne Hicks	Brian W. Yee
David Horowitz	
Jeffery Hynes	
MEMBERS ABSENT:	
Honorable Edward Ableser	Ms. Danette Hendry
Honorable Andy Biggs	Honorable Leah Landrum Taylor
Honorable Steve Court	Patty O'Berry
Mr. Todd Franks	Honorable Rebecca Rios
GUESTS:	
Ms. Kathleen Mayer	Pima County Attorney's Office
STAFF:	
Kathy Sekardi	Administrative Office of the Courts
Tama Reily	Administrative Office of the Courts
Ingrid Garvey	Arizona House of Representatives
Amber O'Dell	Arizona State Senate

CALL TO ORDER

Without a quorum present, the December 3, 2010, meeting of the Domestic Relations Committee (DRC) was called to order at 10:02 a.m. by Senator Linda Gray, Co-Chair.

ANNOUNCEMENTS

Senator Gray made the following announcements:

- Judge Thomas Wing will be retiring at the end of the year and today will be his last meeting with the DRC. Senator Gray thanked Judge Wing for years of service on the committee and commended his dedication to the court community. Senator Gray noted Judge Wing's knowledge and expertise will be sorely missed.
- DRC member, George Salaz, resigned from the committee in November due to numerous commitments. Senator Gray acknowledged his years of service to the DRC and wished him well in his future endeavors.

PROPOSED LEGISLATION

Kathleen Mayer, Legislative Liaison, Pima County Attorney's Office, presented several legislative proposals for consideration. The intent of the proposed bills is to bring the statute language up to date with technological strategies being employed by individuals who use electronic devices to harass and/or stalk their victims.

A.R.S. § 13-2916 *Use of telephone to terrify, intimidate, threaten, harass, annoy or offend*

Currently, the statute specifies the use of a telephone to harass and intimidate. The expansive language in the proposal includes various electronic, digital and/or wireless methods of communication.

MOTION: To support the proposed changes to A.R.S. § 13-2916 as presented.
SECOND: Motion Seconded.
VOTE: Passed 16-1-0

A.R.S. § 13-2923 *Stalking; classification; definitions*

The current statute stipulates that stalking include visual or physical proximity to the person being stalked. The proposal will expand the definition of 'course of conduct' to include electronic, digital, and/or wireless methods.

Judge Wing suggested a clarification in (C)(1) where the phrase "on two or more occasions" is somewhat vague. Ms. Mayer agreed to make the requested clarification.

MOTION: To support the proposed changes to A.R.S. § 13-2923 with changes as discussed.
SECOND: Motion Seconded
VOTE: Passed 16-1-0

A.R.S. § 13-1302(D) *Custodial Interference; child born out of wedlock; defenses; classification*

This statute underwent changes in 2000, and consequently an unintended language omission occurred. This proposal would add back in the omitted language in (D)(4),

which would reduce the violation to a misdemeanor if there is a voluntary return of the child by the parent or defendant prior to arrest.

David Horowitz asked if the statute should state explicitly that the penalty reduction may apply contingent upon whether the individual is returning the child at the direction of the defendant or at the direction of the parent who committed the custodial interference. Ms. Mayer stated it is her understanding that this is already the case without specifying it in the statute. However, she will check with her domestic violence prosecutors and notify Amber O'Dell of any additional changes needed.

The DRC did not move this proposal forward.

APPROVAL OF MINUTES

With a quorum now present, the draft minutes of the October 15, 2010 meeting of the DRC were presented for approval.

MOTION: To approve the October 15, 2010 DRC draft meeting minutes as presented.
SECOND: Motion seconded.
VOTE: Approved unanimously

MEDICAL RECORDS STATUTE A.R.S. § 12-2293

David Weinstock, presented proposed changes to A.R.S. § 12-2293, the current statute for release of medical records. Dr. Weinstock noted that the confusing and seemingly contradictory statutory specifications have lead to disagreement among practitioners as to what constitutes appropriate release of records. He stated the confusion has a direct impact on custody evaluations and offered a few examples in order to demonstrate the ambiguities. Dr. Weinstock requests the committee to approve clarification of the statute.

MOTION: To review the statute and bring it back for further evaluation.
SECOND: Motion seconded.
VOTE: Approved unanimously.

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP UPDATES RELOCATION STATUTE

Steve Wolfson provided an update on the workgroup's progress with the modification of the relocation statute, A.R.S. § 25-408. Mr. Wolfson stated they last met on November 23, at which time the Relocation Subgroup presented its proposed amendments to the statute. The workgroup's concerns regarding the draft amendments were explained to the subgroup for consideration. The draft being presented to the DRC today incorporates many of the workgroup's suggested changes, as well as the DRC's suggested changes made at the October DRC meeting. The workgroup would like to move the proposal forward to legislative council for final bill drafting.

Lengthy discussion ensued on the matter. Several members questioned how the public would learn about the relocation statute change. Mr. Wolfson stated that notification to the public regarding new legislation is considered a public relations issue. With regard to potential frivolous litigation by the opposing parent when a parent gives notice of plans to relocate, there is a provision to allow for a move for a judgment on the pleadings under The Rules Of Family Law Procedure, and the court can rule upon the move without a hearing. Several members had questions regarding the proposed move of section 25-403 (Custody statute.). Mr. Wolfson assured the DRC members the relocation workgroup is not addressing the custody sections at this time. Ms. Hawkins explained that while working on changes to 25-408, it became apparent that aspects of the statute did not belong in the relocation section. Thus, they set them aside and focused their work on the relocation section only. The other statutes will need to be dealt with at some point in the future, but the workgroup and subgroup will complete the initial task at hand first.

At this point discussion turned to a letter received from Tom Alongi, Senior Staff Attorney at Community Legal Services, in which he presents concerns regarding the draft of the new relocation bill. Members were unprepared to have meaningful discussion on the issues enumerated by Mr. Alongi as his letter was made available just prior to the start of the meeting. One member asked if Mr. Alongi were to appear at a future DRC meeting to discuss his concerns, and the current draft proposal had already been submitted to the legislature, could the committee still submit modifications to the legislation based on its consideration of Mr. Alongi's suggestions? Senator Gray answered this question in the affirmative and reported this scenario is a frequent part of the bill-making process.

Senator Gray suggested that she submit the proposed amendments to A.R.S. § 25-408 to Legislative Council to draft, and have the draft emailed back to Kathy Sekardi to distribute to the committee. She noted it may be necessary for the DRC to reconvene to review the issue at that time, if there were any substantive changes made to the bill.

AD HOC CUSTODY WORKGROUP UPDATE

Bill Fabricius gave a brief update on the status of the workgroup. He reported the work continues to progress and there are no major changes to present at this time. The workgroup considers public outreach a primary endeavor in terms of getting the word out about the group's existence, its goals, and the website contents. He stated they believe it is important to obtain as much input from the public and stakeholders as possible to aid in guiding the workgroup's efforts.

DRC 2011 MEETING DATES

Senator Gray directed members' attention to the 2011 DRC meeting dates displayed on the screen. The dates are as follows:

- June 3, 2011; Conference Room 119 A/B
- September 23, 2011; Conference Room 345 A/B

- October 21, 2011; Conference Room 345 A/B

Meeting dates are all on Fridays at the Arizona State Courts Building. More specific meeting details will be provided to members as each meeting date approach.

GOOD OF THE ORDER/CALL TO THE PUBLIC

Mr. Terry Decker detailed several suggestions he has regarding the proposed amendments to A.R.S. § 25-408. His written comments are provided in Addendum A - Public Comment.

ADJOURN

Meeting was adjourned at 11:44 a.m.

NEXT MEETING:

Friday, June 3, 2011
Conference Room 119 A/B
State Courts Building
1501 W. Washington
Phoenix, Arizona

Addendum A – Public Comment

**Proposed language submitted by:
Terry Decker, a member of the public**

Proposed Amendments to §25-408

25-408. Rights of the noncustodial parent, Relocation of child; exception;
enforcement

A. A parent who is not granted custody of the child is entitled to reasonable parenting time rights to ensure that the minor child has frequent and continuing contact with the noncustodial parent unless the court finds, after a hearing, that parenting time would endanger seriously the child's physical, mental, moral or emotional health.

A. A parent shall provide written, **RETURN RECEIPT** notice to the other parent as ~~soon as~~ **within three days of when** he or she becomes aware of any actual or impending change to his or her current physical address or contact information. The notification must include the effective date of such changes and the following language.

You have received notice from the other parent regarding a change of residence of the child or children. Arizona Law, A.R.S. § 25-408, ~~gives you the right to request a hearing to object to the move if you believe that the move will substantially or adversely impact your court-ordered parenting time.~~ **REQUIRES ME TO REQUEST A HEARING UNLESS I HAVE YOUR AGREEMENT.**

A residential move that may ~~substantially or adversely~~ impact a current court-ordered parenting plan or written agreement regarding parenting time includes, but is not limited to, a residential move that:

1. Results in a change to the school the minor child will attend after such a move;
2. Increases the travel time for transportation of the minor child for the exercise of parenting time to such a degree that the child's time with either parent will be decreased significantly.
3. Significantly impacts the child's established routine in his or her home, school, or community.

ANY ADDITIONAL OR INCREASED COST TO VISITATION SHALL BE BORN BY THE MOVING PARENT UNLESS THERE IS AGREEMENT OTHERWISE.

~~YOU MUST FILE A REQUEST FOR HEARING WITHIN 20 DAYS OF THE 12
RECEIPT OF THE NOTICE IF YOU OBJECT.~~

**THE BURDEN IS UPON THE PARENT PROPOSING RELOCATION TO
EITHER**

- 1. OBTAIN WRITTEN, NOTARIZED AGREEMENT FROM THE
OTHER PARENT OR**
- 2. FILE A REQUEST FOR HEARING WITHIN 30 DAYS OF THE
RECEIPT OF THE NOTICE.**

OTHERWISE THE MOVE CANNOT BE MADE.

B. A parent who intends to make a residential move must provide the notice required by section a to the other parent no less than sixty days prior to relocating the child. ~~If an objection is filed the child 15 may not be relocated without a court order after a hearing.~~ **THE RELOCATION CANNOT BE MADE WITHOUT THE AGREEMENT OF THE PARTIES OR AN ORDER OF THE COURT.**

C. The notice required by Section A shall include the anticipated date of relocation and the proposed location, including a physical address if known. The notice shall

also state the reason that the parent is proposing the relocation of the child. The notice required by this section must be made either by certified mail, return receipt requested, or be served pursuant to the Arizona Rules of Family Law Procedure. The court shall sanction a parent who, ~~without good cause,~~ does not comply with the notification requirements of this subsection. The court may impose a sanction that will affect custody or parenting time ~~only in accordance with the child's best interests.~~

D. ~~Except as provided in the Servicemembers Civil Relief Act, within twenty days after notice is received, the nonmoving parent may petition the court to prevent the proposed move of the child if the move may substantially or adversely impact a current court ordered parenting plan or written agreement regarding parenting time. After expiration of this time any petition or other application to prevent the proposed move of the child may be heard only on a showing of good cause for the delay. 28.~~ A parent who is proposing to move the child may petition the court for a hearing, on notice to the other parent, to determine the appropriateness of the move that may adversely affect the other parent's custody or parenting time rights.

For purposes of this section, a residential move that may substantially or adversely impact a current court-ordered parenting plan or written agreement regarding parenting time includes, but is not limited to, a residential move that:

1. Results in a change to the school the minor child will attend after such a move;
2. Increases the travel time for transportation of the minor child for the exercise of parenting time to such a degree that the child's time with either parent will be decreased significantly.
3. Significantly impacts the child's established routine in his or her home, school, or community.

E. Notice is ~~not~~ required if a provision for a proposed move of a child has been made by a court order or a written agreement of the parties that is dated within one year of the proposed move of a child.

F. The court shall not deviate from a provision of the current court-ordered parenting plan by which the parents specifically have agreed to allow or prohibit relocation of the child ~~unless the court finds that the provision is no longer in the child's best interests. There is a rebuttable presumption that a relocation provision from the current court-ordered parenting plan is in the child's best interests.~~

G. The parent who has given notice of a proposed move may move for judgment on the pleading and shall follow the procedure set forth in Rule 32(C), Arizona Rules of Family Law Procedure.

H. The court shall determine whether to allow the parent to relocate the child in accordance with the child's best interests. The burden of proving what is in the child's best interests is on the parent who is seeking to relocate the child. To the extent possible the court shall also make appropriate arrangements to ensure the continuation of a meaningful relationship between the child and both parents.

- I. In determining the child's best interests the court shall consider all relevant factors including:

- II. 1. The factors prescribed under section 25-403.
2. Whether the relocation is being made or opposed in good faith.
 3. ~~The prospective advantage of the move for improving the general quality of life for the child.~~
 4. The likelihood that the parent with whom the child will reside after the relocation will comply with parenting time orders.
 5. Whether the relocation will ~~allow a realistic opportunity~~ **CHANGE** for parenting time with each parent.
 6. The extent to which moving or not moving will affect the child's stability and the emotional, physical or developmental needs of the child.
 7. Whether a parent's primary motive in requesting or opposing relocation is to gain a financial advantage regarding continuing child support obligations.
 8. **A PARENT MAKING FALSE ALLEGATIONS OR STATEMENTS WILL BE CONSIDERED A LESS THAN FIT PARENT BECAUSE THAT PARENT HAS DEMONSTRATED THAT THEY DEEM THEIR CHILD A PAWN AND ARE PROMOTING CONFLICT.**

~~J. In the event that the moving parent has primary physical custody and has the exclusive right to make 1 educational decisions for the child or children and the proposed change of residence for the child or 2 children would allow for reasonable and meaningful access which is not significantly less than 3 provided under the current parenting time order, there shall be a presumption that it is in the child's 4 best interest to relocate with the moving parent. 5~~

K. A parent who is required by any one of the following circumstances: health, safety, employment or involuntary change of residence of that parent or that parent's spouse to relocate in less than sixty days after written notice has been given to the other parent may temporarily relocate with the child only if both parents execute a written agreement or a parent obtains a court order pursuant to Rules 9 47, 48 OR 91, Arizona Rules of Family Law Procedure.

L. Hearings conducted on petitions to permit or to prevent relocation of a child shall ~~not~~ be considered as motions to modify child custody and the parties ~~are not~~ **SHALL BE** required to comply with the provisions of A.R.S § 25-411 .

EXCLUSIVE OF PARAGRAPH H or Rule 91(d), Arizona Rules of Family Law Procedure.

M. THE NONCUSTODIAL PARENT SHALL ALWAYS HAVE THE RIGHT OF FIRST REFUSAL FOR CARING FOR THE CHILD WHEN THE PARENT EXERCISING PARENTING TIME CANNOT BE WITH OR CARE FOR THE CHILD. THE NONCUSTODIAL PARENT SHALL TAKE PRECEDENCE REGARDING PARENTING TIME OVER ALL OTHER PERSONS WHEN THE CUSTODIAL PARENT CANNOT EXERCISE THEIR TIME WITH THE CHILDREN PERSONALLY. THIS SHALL APPLY TO ANY TIME GREATER THAN ONE HOUR. REASONABLE BEHAVIOR

SHALL BE MAINTAINED AND ABUSE SHALL BE SANCTIONED. THE CHILDREN SHALL NOT BE USED AS A PAWN.